

#### **§ 655.1010**

shall be written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint. The complaint shall set forth sufficient facts for the Administrator to determine whether there is reasonable cause to believe that a particular part or parts of the attestation or regulations may have been violated. The complaint may be submitted to any local Wage and Hour Division office, the addresses of which can be found in local telephone directories. The office or person receiving such a complaint shall refer it to the office of the Wage and Hour Division administering the area in which the reported violation is alleged to have occurred.

(c) The Administrator shall determine whether there is reasonable cause to believe that a complaint warrants investigation. If it is determined that a complaint fails to present reasonable cause, the Administrator shall so notify the complainant, who may submit a new complaint with such additional information as may be available. If the Administrator determines that reasonable cause exists, an investigation will be conducted.

(d) In the event that the Administrator, after an investigation, determines that the employer has committed any violation(s) described in paragraph (a) of this section, the Administrator shall issue a written determination to the employer in accordance with § 655.1015 of this part and an opportunity for a hearing shall be afforded in accordance with the procedures specified in § 655.1020 of this part.

#### **§ 655.1010 Remedies.**

Where the Administrator, after notice and opportunity for a hearing, determines that an employer has committed a violation identified in § 655.1005(a) of this part, the employer shall be disqualified from employing F-1 student(s) under section 221 of the Act. The Administrator shall so notify the Attorney General and ETA pursuant to § 655.1055 of this part. Upon receipt of the Administrator's notice, the Attorney General and ETA shall take the action specified in § 655.1055 of this part, *i.e.*, cancel any existing attestation(s) or work authorizations, and shall not accept future attestation(s)

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or grant new work authorization(s) with respect to that employer.

#### **§ 655.1015 Written notice and service of Administrator's determination.**

(a) The Administrator's written determination, issued pursuant to §§ 655.1005 and 655.1010 of this part, shall be served on the employer by personal service or by certified mail at the address of the employer or the employer's agent shown on the attestation. Where service by certified mail is not accepted by the employer, the Administrator may exercise discretion to serve the determination by regular mail.

(b) The Administrator's written determination, issued pursuant to §§ 655.1005 and 655.1010 of this part, shall:

(1) Set forth the Administrator's determination of the violation(s) and the Administrator's reason or reasons therefor.

(2) Inform the employer that it may request a hearing pursuant to § 655.1020 of this part.

(3) Inform the employer that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, and give the addresses of the Chief Administrative Law Judge (with whom the request must be filed) and the representative of the Solicitor of Labor (who must be served with a copy of the request).

(5) Inform the employer that, if no timely request for a hearing is filed pursuant to § 655.1020 of this part, the employer shall be disqualified from employing F-1 students, effective upon the expiration of the period for filing a request for a hearing. In such event, the Administrator shall, pursuant to § 655.1055 of this part, notify ETA and the Attorney General of the occurrence of a violation by the employer, and that the employer has been disqualified from employing F-1 students.

#### **§ 655.1020 Request for hearing.**

(a) An employer desiring to request an administrative hearing on a determination issued pursuant to § 655.1015

of this part shall make such request in writing to the Chief Administrative Law Judge at the address stated in the notice of determination. Copies of the request shall be served upon the Wage and Hour Division official who issued the notice of determination and upon the representative of the Solicitor of Labor identified in the notice of determination.

(b) No particular form is prescribed for any request for hearing permitted by this section. However, any such request shall:

- (1) Be dated;
- (2) Be typewritten or legibly written;
- (3) Specify the issue or issues stated in the notice of determination giving rise to such request;
- (4) State the specific reason or reasons why the employer believes such determination is in error;
- (5) Be signed by the employer making the request or by an authorized representative of the employer; and
- (6) Include the address at which the employer or authorized representative desires to receive further communications relating thereto.

(c) The request for such hearing must be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 15 calendar days after the date of the determination.

(d) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting party's protection, if the request is by mail, it should be by certified mail. If the request is by facsimile transmission, the original of the request, signed by the employer or authorized representative, shall be filed within ten days thereafter.

(e) A copy of the request for a hearing shall be sent by the requestor to the Administrator at the address shown on the Administrator's notice of determination.

**§ 655.1025 Rules of practice for administrative law judge proceedings.**

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and

Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

**§ 655.1030 Service and computation of time.**

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., room N-2716, Washington, DC 20210, and one copy on the attorney representing the Administrator in the proceeding.

(c) Time under this subpart shall be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

**§ 655.1035 Administrative law judge proceedings.**

(a) Upon receipt of a timely request for a hearing filed pursuant to and in